

JUDGE COTE



Jason M. Drangel (JMD 7204)  
[jdrangel@ipcounselors.com](mailto:jdrangel@ipcounselors.com)  
Ashly E. Sands (AES 7715)  
[asands@ipcounselors.com](mailto:asands@ipcounselors.com)  
Spencer Wolfgang (SW 2389)  
[swolgang@ipcounselors.com](mailto:swolgang@ipcounselors.com)  
Mary Kate Brennan (MB 5595)  
[mbrennan@ipcounselors.com](mailto:mbrennan@ipcounselors.com)  
EPSTEIN DRANGEL LLP  
60 East 42<sup>nd</sup> Street, Suite 2520  
New York, NY 10165  
Telephone: (212) 292-5390  
Facsimile: (212) 292-5391  
*Attorneys for Plaintiffs*  
*Spin Master Ltd. and Spin Master, Inc.*

17 CV 7422

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

SPIN MASTER LTD. AND SPIN MASTER,  
INC.  
*Plaintiffs*

v.

ALAN YUAN'S STORE; ANGEL 123;  
ASTORIATOY STORE; BRAND CHILDREN'S  
MILA; SHENZHEN CBP TECHNOLOGY CO.,  
LTD. D/B/A CBPBRUCELAM; DAN HUI  
INTERNATIONAL TRADE CO., LTD. D/B/A  
PADA CRAFT; CHILD'S TOY KINGDOM;  
GUANGZHOU PLUS TRADING CO., LTD.  
D/B/A COLORFULFLOWER; DARLINGBABY  
STORE; ELECTRICAL SPARKLE; ESHOP\_DH  
TECHNOLOGY CO., LIMITED D/B/A  
ESHOPDH; FABULOUS SHENZHEN SRORE;  
FASHIONA MONICA; FLYING MODEL;  
GAME ZONE STORE; GEE-GEE STORE;  
GEEK ALERT; GEEK HUMOR; GROWTH  
TOY WHOLESALE A/K/A LITTLE HEE FUN  
STORE; GUANGHUIYIFANG; GUANGZHOU  
TAILOR FASHION CO., LTD.; HAPPIER LIFE;  
HAPPYDEAL STORE; HELLOBABE; HITOP  
D/B/A SMARTPHONE ACCESSORIES;  
HOARD STORE; HUNAN DOUBLE BULLS

CIVIL ACTION No.

~~{PROPOSED}~~ 1) TEMPORARY  
RESTRAINING ORDER; 2)  
ORDER TO SHOW CAUSE WHY  
A PRELIMINARY INJUNCTION  
SHOULD NOT ISSUE; 3) ASSET  
RESTRAINING ORDER; 4)  
ORDER AUTHORIZING  
ALTERNATIVE SERVICE BY  
ELECTRONIC MEANS; AND 5)  
ORDER AUTHORIZING  
EXPEDITED DISCOVERY

FILED UNDER SEAL

GIFTS CO., LTD.; I-CODEL STORE;  
 JUNYANG STORE; JUSTBUY STORE;  
 KNIGHTS; L&Y EXPORT; GOOPHONE S8 S8  
 PLUS I7 SMARTPHONE; NEVER MORE;  
 NINGBO KM IMPORT & EXPORT CO., LTD.;  
 REDPEACH SWEET STORE; SHANTOU  
 CHENGHAI HENGYE TOYS FACTORY;  
 SHANTOU CHENGHAI MAYA TOYS  
 FACTORY; SHANTOU CITY BHX CO., LTD.;  
 SHANTOU GEEKMAN TECHNOLOGY CO.,  
 LTD.; SHANTOU JH TOYS TRADING FIRM;  
 SHANTOU JOYTEAM TOYS FACTORY;  
 SHANTOU SINGDATOYS TRADING FIRM;  
 SHANTOU TAI XING YUAN TOYS FIRM;  
 SHANTOU TOPTRUE TOYS TRADING FIRM;  
 SHENZHEN ANRAN TRADING CO., LTD.;  
 SHENZHEN BOOMHOT INDUSTRY  
 COMPANY LIMITED; SHENZHEN CAPITAL  
 ELECTRONICS CO., LTD.; SHENZHEN K-  
 CREATE CO., LTD.; SHENZHEN NORDA  
 TOYS & GIFTS INDUSTRIAL LIMITED;  
 SHENZHEN SUNSHION OVISTORE;  
 SHOP1798081 STORE; SICHA STORE;  
 SIMPLE IS BEAUTIFUL; SPECIAL TOYS  
 STORE 3.29; SUNFLOWERS HOUSE STORE;  
 VETICE TOY FACTORY; VTOY; WJTF1234;  
 WOMEN & BABY CLOTHES STORE;  
 XIAMEN DOMINGO TRADING CO., LTD.;  
 XIAOBING STORE; YI LONG YUAN STORE;  
 YIWUSUMAI0802 STORE;  
 YIXIAOJUNSHU2014; and ZDOMAIN3,  
*Defendants*

On this day, the Court considered Plaintiffs' *ex parte* application for: 1) a temporary restraining order; 2) an order to show cause why a preliminary injunction should not issue; 3) an asset restraining order; 4) an order authorizing alternative service by electronic mail; and 5) an order authorizing expedited discovery against Defendants alan yuan's store, Angel 123, Astoriatoys Store, Brand Children's MILA, Shenzhen CBP Technology Co., Ltd. d/b/a Chpbrucelam, Dan Hui International Trade Co., Ltd. d/b/a PADA CRAFT, Child's toy kingdom, Guangzhou plus Trading Co., Ltd. d/b/a Colorfulflower, Darlingbaby Store, Electrical Sparkle,

Eshop\_dh Technology Co., Limited d/b/a Eshopdh, Fabulous Shenzhen Store, Fashion Monica, Flying Model, Game Zone Store, Gee-Gee Store, Geek Alert, GEEK HUMOR, Growth Toy Wholesale a/k/a LITTLE HEE FUN Store, GuangHuiYiFang, Guangzhou Tailor Fashion Co., Ltd., Happier Life, happydeal Store, Hellobabe, Hitop d/b/a Smartphone Accessories, Hoard Store, Hunan Double Bulls Gifts Co., Ltd., I-Coodel Store, JunYang Store, JustBuy Store, Knights, L&Y export; goophone S8 S8 Plus i7 plus Smartphone; never more; Ningbo KM Import & Export Co., Ltd., Redpeach Sweet Store, Shantou Chenghai Hengye Toys Factory, Shantou Chenghai Maya Toys Factory, Shantou City BHX Co., Ltd.; Shantou Geekman Technology Co., Ltd., Shantou JH Toys Trading Firm, Shantou Joyteam Toys Factory, Shantou Singdatoys Trading Firm, Shantou Tai Xing Yuan Toys Firm, Shantou Toptrue Toys Trading Firm, Shenzhen anran trading Co., Ltd., Shenzhen Boomhot Industry Company Limited, Shenzhen Capital Electronics Co., Ltd., Shenzhen K-create Co., Ltd., Shenzhen Norda Toys & Gifts Industrial Limited, Shenzhen Sunshion OviStore, Shop1798081 Store, Sicha Store, Simple is beautiful, Special toys store 3.29, Sunflowers House Store, Vetice Toy Factory, Vtoy, Wjtf1234, Women & Baby Clothes Store, Xiamen Domingo Trading Co., Ltd., xiaobing Store, yi long yuan Store, YiWuSuMai0802 Store, yixiaojunshu2014, and Zdomain3 (hereinafter collectively referred to as “Defendants”) in light of Defendants’ intentional and willful offerings for sale and/or sales of Counterfeit Products (as defined *infra*) (“Application”). A complete list of Defendants and their known contact information and associated Financial Institutions (as defined *infra*) and known account information is attached hereto as **Schedule A**. Having reviewed the Application, the Declarations of Jessica Arnaiz, Christopher Hars, and Mary Kate Brennan, and exhibits attached thereto and other evidence submitted in support thereof, the Court makes the following findings of fact and conclusions of law:

**FACTUAL FINDINGS & CONCLUSIONS OF LAW**

1. Plaintiff Spin Master Ltd. and Plaintiff Spin Master, Inc. (collectively hereinafter referred to as (“Plaintiffs”)) are part of a large, multinational toy and entertainment company. Spin Master, Inc. is a wholly-owned subsidiary of Spin Master Ltd. and is the exclusive licensee of Spin Master Ltd. in the United States. One of Plaintiffs’ most recent successful products is a children’s toy marketed and sold under the distinctive trademarks FLUTTERBYE and FLUTTERBYE FAIRY (“Authentic Product(s)”);

2. Plaintiffs are the owners of U.S. Trademark Registration No. 4,499,249 for “FLUTTERBYE” for a variety of goods in Class 28 (“Flutterbye Mark”) and U.S. Trademark Registration No. 3,743,669 for “FLUTTERBYE FAIRY” for a variety of goods in Class 28 (“Flutterbye Fairy Mark”) (hereinafter collectively referred to as the “Marks”). The Marks have been in use in commerce in connection with the Authentic Products continuously since their constructive dates of first use and are currently in use in commerce in connection with the Authentic Products. The constructive date of first use based on Plaintiffs’ federal trademark registration for the Flutterbye Fairy Mark is at least as early as June 26, 2008 and the constructive date of first use based on Plaintiffs’ federal trademark registration for the Flutterbye Mark is at least as early as December 19, 2012.

3. Plaintiffs own U.S. Copyright Registration No. VA 1-899-358 covering the Flutterbye Flower Fairy’s packaging artwork, U.S. Copyright Registration No. VA 1-861-460 covering the Flutterbye Flying Toy figurine, U.S. Copyright Registration No. VA 1-901-312 covering the Flutterbye Flower Fairy figurine, U.S. Copyright Registration No. 1-913-178 covering the Flutterbye Ocean Fairy figurine, U.S. Copyright Registration No. VA 1-912-815 covering the Flutterbye Sunbeam Fairy figurine, U.S. Copyright Registration No. VA 1-900-805 covering the Flutterbye Stardust Fairy figurine, and U.S. Copyright No. VA 1-899-356 covering

the Flutterbye Fairy instructional manual (hereinafter collectively referred to as the “Copyright Works”).

4. Defendants are manufacturing, importing, exporting, advertising, marketing, promoting, distributing, displaying, offering for sale, and/or selling infringing and/or counterfeit products bearing and/or using Plaintiffs’ Marks and/or marks that are confusingly similar to, identical to, and constitute a counterfeiting and/or infringement of Plaintiffs’ Marks and/or displaying and/or incorporating Plaintiffs’ Copyright Works and/or works that are substantially similar to, identical to, and constitute infringement of Plaintiffs’ Copyright Works (“Counterfeit Products”) through Defendants’ User Accounts (as defined *infra*) and/or online storefronts on Third Party Service Provider (as defined *infra*) marketplace platforms including, without limitation, Alibaba.com, AliExpress.com, and/or DHgate.com (hereinafter collectively referred to as the “Storefronts”). *See Schedule A* for links to Defendants’ Storefronts and listings for Counterfeit Products.

5. Defendants are not, nor have they ever been, authorized distributors or licensees of the Authentic Products. Neither Plaintiffs nor any of Plaintiffs’ authorized agents have consented to Defendants’ use of Plaintiffs’ Marks or Plaintiffs’ Copyright Works, nor have Plaintiffs consented to Defendants’ use of any identical or confusingly similar marks or artwork;

6. Plaintiffs are likely to prevail on their Lanham Act claims, copyright infringement claims, and related state law claims at trial;

7. As a result of Defendants’ infringement and counterfeiting, Plaintiffs as well as consumers are likely to suffer an immediate and irreparable loss, damage, and injury before Defendants can be heard in opposition, unless Plaintiffs’ Application for *ex parte* relief is granted:

- a. Defendants have offered for sale and sold substandard Counterfeit Products that are counterfeit and infringe Plaintiffs' Marks and/or Plaintiffs' Copyright Works;
- b. Plaintiffs have well-founded fears that more Counterfeit Products will appear in the marketplace; that consumers may be misled, confused, and disappointed by the quality of these Counterfeit Products, resulting in the consequent injury to Plaintiffs' reputation and goodwill; and that Plaintiffs may suffer loss of sales for their Authentic Products; and
- c. Plaintiffs have well-founded fears that if they proceed on notice to Defendants on this Application, Defendants will: (i) secret, conceal, destroy, alter, sell-off, transfer, or otherwise dispose of or deal with Counterfeit Products or other goods that infringe Plaintiffs' Marks and/or Plaintiffs' Copyright Works, the means of obtaining or manufacturing such Counterfeit Products, and records relating thereto that are in their possession or under their control, (ii) inform their suppliers and others of Plaintiffs' claims with the result being that those suppliers and others may also secret, conceal, sell-off, or otherwise dispose of Counterfeit Products or other goods infringing Plaintiffs' Marks and/or Plaintiffs' Copyright Works, the means of obtaining or manufacturing such Counterfeit Products, and records relating thereto that are in their possession or under their control, (iii) secret, conceal, transfer, or otherwise dispose of their ill-gotten proceeds from its sales of Counterfeit Products or other goods infringing Plaintiffs' Marks and/or Plaintiffs' Copyright Works, and records relating thereto that are in their possession or under their control, and/or (iv) open new accounts or Storefronts on Alibaba.com, AliExpress.com, or DHgate.com

under new or different names and continue to offer for sale and sell Counterfeit Products with little to no consequence;

8. The balance of potential harm to Defendants of being prevented from continuing to profit from their illegal and infringing activities if a temporary restraining order is issued is far outweighed by the potential harm to Plaintiffs, their business, the goodwill and reputation built up in and associated with Plaintiffs' Marks and Plaintiffs' Copyright Works, and to their reputation if a temporary restraining order is not issued.

9. Public interest favors issuance of the temporary restraining order in order to protect Plaintiffs' interests in and to their Marks and Copyright Works, and to protect the public from being deceived and defrauded by Defendants' passing off of their substandard Counterfeit Products as Plaintiffs' Authentic Products.

10. Plaintiffs have not publicized their request for a temporary restraining order in any way.

11. Service on Defendants via electronic means, including the delivery of copies of the Summons and Complaint, together with all documents filed in support of Plaintiffs' Application, by (i) e-mail, (ii) messaging through Defendants' online Storefronts, and (iii) website publication is reasonably calculated to result in proper notice to Defendants.

12. If Defendants are given notice of the Application, they are likely to secret, conceal, transfer, or otherwise dispose of their ill-gotten proceeds from their sales of Counterfeit Products or other goods infringing Plaintiffs' Marks and/or Plaintiffs' Copyright Works. Therefore, Plaintiffs have good cause to be granted an asset restraining order. It typically takes noticed Financial Institutions and/or Third Party Service Providers a minimum of five (5) days to locate, attach, and freeze Defendants' Assets (as defined *infra*) and/or Defendants' Financial

Accounts (as defined *infra*). As such, in its order, the Court should allow enough time for the Financial Institutions and/or Third Party Service Providers to freeze Defendants' Assets and Financial Accounts before requiring service on Defendants.

13. Similarly, if Defendants are given notice of the Application, they are likely to destroy, move, hide, or otherwise make inaccessible to Plaintiffs' records and documents relating to Defendants' manufacturing, importing, exporting, advertising, marketing, promoting, distributing, displaying, offering for sale, and/or sale of Counterfeit Products. Therefore, Plaintiffs have good cause to be granted expedited discovery.

### **ORDER**

Based on the foregoing findings of fact and conclusions of law, Plaintiffs' Application is hereby **GRANTED** as follows (the "Order"):

#### **I. Temporary Restraining Order**

A. IT IS HEREBY ORDERED, as sufficient cause has been shown, that Defendants, their respective officers, employees, agents, servants, and attorneys, and all persons in active concert or participation with any of them (regardless of whether located in the U.S. or abroad), who receive actual notice of this Order, including, without limitation, any: (1) banks, financial institutions, credit card companies, and payment processing agencies, such as PayPal Inc. ("PayPal"), Payoneer Inc., the Alibaba Group d/b/a Alibaba.com and Aliexpress.com ("Alibaba"), and Dunhuang Group d/b/a DHgate.com ("DHgate") payment services (*e.g.*, Alipay.com Co., Ltd. and Ant Financial Services Group, hereinafter referred to as "Alipay," or DHpay.com), and other companies or agencies that engage in the processing or transfer of money and/or real or personal property of Defendants ("Financial Institutions"); and (2) online marketplace platforms, including, without limitation, those



owned and operated, directly or indirectly, by Alibaba and DHgate, such as Alibaba.com, AliExpress.com, and DHgate.com (“Third Party Service Providers”) (hereinafter collectively referred to as the “Restrained Persons”), are hereby restrained and enjoined from engaging in any of the following acts or omissions pending the hearing and determination of Plaintiffs’ Application for a preliminary injunction as referenced in **Paragraph (II)(A)** below, or until further order of the Court:

- 1) from manufacturing, importing, exporting, advertising, marketing, promoting, distributing, displaying, offering for sale, selling, and/or otherwise dealing in Counterfeit Products, or any other products bearing Plaintiffs’ Marks and/or marks that are confusingly similar to, identical to, and constitute a counterfeiting and/or infringement of Plaintiffs’ Marks and/or incorporating Plaintiffs’ Copyright Works and/or artwork that is substantially similar to, identical to, and constitute infringement of the Plaintiffs’ Copyright Works;
- 2) from communicating, directly or indirectly, with any person or persons: (i) from whom Defendants purchased or obtained any Counterfeit Products; (ii) to whom Defendants sold or offered to sell such Counterfeit Products; or (iii) of whom Restrained Persons know, or reasonably believe, to possess, control, or have access to any such Counterfeit Products;
- 3) from secreting, concealing, destroying, altering, selling off, transferring, or otherwise disposing of and/or dealing with: (i) Counterfeit Products; and/or (ii) any computer files, data, business records, documents or any other records or evidence relating to the Storefronts, Defendants’ Assets, and the manufacture, importation, exportation,

advertising, marketing, promotion, distribution, display, offering for sale, and/or sale of Counterfeit Products;

- 4) from secreting, concealing, transferring, disposing of, withdrawing, encumbering or paying any money, securities, or other property or assets of Defendants (whether said assets are located in the U.S. or abroad) (hereinafter collectively referred to as "Defendants' Assets") from or to accounts associated with or utilized by any Defendant or any Defendant's Storefront (whether said account is located in the U.S. or abroad) ("Defendants' Financial Accounts") until further ordered by this Court;
- 5) from effecting assignments or transfers, forming new entities or associations, or creating and/or utilizing any other platform, account, Storefront, or any other means of importation, exportation, advertising, marketing, promotion, distribution, display, offering for sale, and/or sale of Counterfeit Products for the purpose of circumventing or otherwise avoiding the prohibitions set forth in this Order;
- 6) from, within five (5) days after receiving actual notice of this Order, providing services to Defendants and Defendants' Storefronts, including, without limitation, continued operation of Defendants' Storefronts; and
- 7) from knowingly instructing, aiding, or abetting any other person or business entity in engaging in any of the activities referred to in subparagraphs I(A)(1) through I(A)(6) above.

**II. Order to Show Cause Why A Preliminary Injunction  
Should Not Issue And Order Of Notice**

✓ A. Defendants are hereby ORDERED to show cause before this Court in Courtroom 158 of the United States District Court for the Southern District of New York at 500 Pearl Street/40 Foley Square, New York, New York on November 2, 2017 at 2<sup>00</sup> pm

or at such other time that this Court deems appropriate, why a preliminary injunction, pursuant to FRCP 65(a), should not issue restraining and enjoining the Restrained Persons from engaging in any of the following acts or omissions pending the final hearing and determination of this action:

- 1) from manufacturing, importing, exporting, advertising, marketing, promoting, distributing, displaying, offering for sale, selling, and/or otherwise dealing in Counterfeit Products, or any other products bearing Plaintiffs' Marks and/or marks that are confusingly similar to, identical to, and constitute a counterfeiting and/or infringement of Plaintiffs' Marks and/or incorporating the Plaintiffs' Copyright Works and/or artwork that is substantially similar to, identical to, and constitute infringement of the Plaintiffs' Copyright Works;
- 2) from directly or indirectly infringing in any manner any of Plaintiffs' trademarks, copyrights, or other rights (whether now in existence or hereafter created) including, without limitation, Plaintiffs' Marks or Plaintiffs' Copyright Works;
- 3) from using any reproduction, counterfeit, copy, or colorable imitation of Plaintiffs' trademarks, copyrights, or other rights (whether now in existence or hereafter created) including, without limitation, Plaintiffs' Marks and Plaintiffs' Copyright Works to identify any goods or services not authorized by Plaintiffs;
- 4) from using any of Plaintiffs' trademarks, copyrights, or other rights (whether now in existence or hereafter created) including, without limitation, Plaintiffs' Marks and Plaintiffs' Copyright Works, or any other marks or artwork that are confusingly or substantially similar to Plaintiffs' Marks and Plaintiffs' Copyright Works on or in connection with Defendants' manufacturing, importing, exporting, advertising,

marketing, promoting, distributing, displaying, offering for sale, selling, and/or otherwise dealing in Counterfeit Products;

- 5) from using any false designation of origin or false description, or engaging in any action which is likely to cause confusion, cause mistake, and/or to deceive members of the trade and/or the public as to the affiliation, connection, or association of any product manufactured, imported, exported, advertised, marketed, promoted, distributed, displayed, offered for sale, or sold by Defendants with Plaintiffs, and/or as to the origin, sponsorship, or approval of any product manufactured, imported, exported, advertised, marketed, promoted, distributed, displayed, offered for sale, or sold by Defendants and Defendants' commercial activities by Plaintiffs;
- 6) from secreting, concealing, destroying, altering, selling off, transferring, or otherwise disposing of and/or dealing with: (i) Counterfeit Products; and (ii) any computer files, data, business records, documents, or any other records or evidence relating to the Storefronts, Defendants' Assets, and the manufacture, importation, exportation, advertising, marketing, promotion, distribution, display, offering for sale, and/or sale of Counterfeit Products;
- 7) from secreting, concealing, transferring, disposing of, withdrawing, encumbering, or paying any of Defendants' Assets from or Defendants' Financial Accounts until further ordered by this Court;
- 8) from providing services to Defendants and Defendants' Storefronts, including, without limitation, continued operation of Defendants' Storefronts;
- 9) from effecting assignments or transfers, forming new entities or associations, or creating and/or utilizing any other platform, account, Storefront, or any other means

of importation, exportation, advertising, marketing, promotion, distribution, display, offering for sale, and/or sale of Counterfeit Products for the purpose of circumventing or otherwise avoiding the prohibitions set forth in any preliminary injunction ordered by the Court in this Action;

- 10) from knowingly instructing, aiding, or abetting any other person or business entity in engaging in any of the activities referred to in subparagraphs II(A)(1) through II(A)(9) above.

B. IT IS FURTHER ORDERED that opposing papers, if any, shall be filed electronically with the Court and served on Plaintiffs' counsel by delivering copies thereof to the office of Epstein Drangel LLP at 60 East 42<sup>nd</sup> Street, Suite 2520, New York, NY 10165, Attn: Jason M. Drangel on or before October 10, 2017. Plaintiffs shall file any Reply papers on or before October 12, 2017.

C. IT IS FURTHER ORDERED that Defendants are hereby given notice that failure to appear at the show cause hearing scheduled in **Paragraph II(A)** above may result in the imposition of a preliminary injunction against them pursuant to FRCP 65, which may take effect immediately upon the expiration of this Order, and may extend throughout the length of the litigation under the same terms and conditions set forth in this Order.

### **III. Asset Restraining Order**

A. IT IS FURTHER ORDERED pursuant to FRCP 64 and 65 and CPLR 6201 and this Court's inherent equitable power to issue provisional remedies ancillary to its authority to provide final equitable relief, as sufficient cause has been shown, that within five (5) days of receipt of notice of this Order, all Financial Institutions and Third Party Service Providers, including, but not limited to, those identified in **Schedule A** who receive actual notice of this Order,

shall locate and attach Defendants Financial Accounts, and shall provide written confirmation of such attachment to Plaintiffs' counsel; and

B. IT IS FURTHER ORDERED, as sufficient cause has been shown, that within five (5) days of receipt of notice of this Order all Financial Institutions and Third Party Service Providers, including but not limited to those identified in **Schedule A** who receive actual notice of this Order, shall identify any and all of Defendants' Financial Accounts, and provide Plaintiff and/or Plaintiffs' counsel with a summary report containing account details for any and all such accounts, which shall include, at a minimum, identifying information for Defendants and Defendants' Storefronts, contact information for Defendants (including mailing addresses and e-mail addresses), account numbers, and account balances for any and all of Defendants' Financial Accounts.

**IV. Order Authorizing Alternative Service by Electronic Means**

A. IT IS FURTHER ORDERED pursuant to FRCP 4(f)(3), as sufficient cause has been shown, that service may be made on, and shall be deemed effective as to Defendants if it is completed by one of the following means:

- 1) delivery of: (i) PDF copies of this Order together with the Summons and Complaint and all papers filed in support of Plaintiffs' Application seeking this Order, or (ii) a link to a secure website where each Defendant will be able to download PDF copies of this Order together with the Summons and Complaint, and all papers filed in support of Plaintiffs' Application seeking this Order to Defendants' e-mail addresses, as identified in **Schedule A** or may otherwise be determined; or
- 2) delivery of a message to Defendants through the same means that Plaintiffs' agents have previously communicated with Defendants, namely the system for communications established by the Third Party Service Providers on their respective

platforms, notifying Defendants that an action has been filed against them in this Court and providing a link to a secure website (such as Dropbox.com, NutStore.com, or a large mail link created through RPost.com) where each Defendant will be able to download PDF copies of this Order together with the Summons and Complaint, and all papers filed in support of Plaintiffs' Application seeking this Order.

- B. IT IS FURTHER ORDERED, as sufficient cause has been shown, that such alternative service by electronic means ordered herein shall be made within two (2) days of the Financial Institutions' and Third Party Service Providers' compliance with **Paragraph III(A)** of this Order, but in any event, shall be made no later than ten (10) days from the date of this Order.
- C. IT IS FURTHER ORDERED, as sufficient cause has been shown, that the Clerk of the Court shall issue a single original summons in the name of "alan yuan's store and all other Defendants identified in the Complaint" that will apply to all Defendants.
- D. IT IS FURTHER ORDERED, as sufficient cause has been shown, that service may be made and shall be deemed effective as to the following Financial Institutions and Third Party Service Providers if it is completed by the following means:
- 1) delivery of: (i) a PDF copy of this Order, or (ii) a link to a secure website where PayPal will be able to download a PDF copy of this Order via electronic mail to EE Omaha Legal Specialist at [EEOMALegalSpecialist@paypal.com](mailto:EEOMALegalSpecialist@paypal.com).
  - 2) delivery of: (i) a PDF copy of this Order, or (ii) a link to a secure website where Alipay will be able to download a PDF copy of this Order via electronic mail to Mr. Benjamin Bai, Vice President and Chief IP Counsel of Ant Financial Services Group at [benjamin.bai@alipay.com](mailto:benjamin.bai@alipay.com) and/or Mr. Di Zhang, Member of the Legal & Compliance Department – IP, at [di.zd@alipay.com](mailto:di.zd@alipay.com).

- 3) delivery of: (i) a PDF copy of this Order, or (ii) a link to a secure website where Alibaba will be able to download a PDF copy of this Order via electronic mail to Ms. Jacqueline Ko, Legal Counsel, Alibaba Group at [jacqueline.ko@alibaba-inc.com](mailto:jacqueline.ko@alibaba-inc.com).
- 4) delivery of: (i) a PDF copy of this Order, or (ii) a link to a secure website where DHgate (including DHPay.com) will be able to download a PDF copy of this Order via electronic mail to the counsel for DHgate at [sluck@fishkinlucks.com](mailto:sluck@fishkinlucks.com) or [rfeinland@fishkinlucks.com](mailto:rfeinland@fishkinlucks.com).

**V. Order Authorizing Expedited Discovery**


A. IT IS FURTHER ORDERED, as sufficient cause has been shown, that:

- 1) Within fourteen (14) days after receiving notice of this Order, each Defendant, or other person served, shall serve upon Plaintiffs or Plaintiffs' counsel a written report under oath providing:
  - a. their true name and physical address;
  - b. the name and location and URL of any and all websites that Defendants' own and/or operate and the name, location, account numbers, and URL for any and all User Accounts and/or storefronts on any Third Party Service Provider platform that Defendants' own and/or operate;
  - c. the complete sales records for any and all sales of Counterfeit Products, including number of units sold, the price per unit, total gross revenues received (in U.S. dollars), and the dates thereof;
  - d. the account details for any and all of Defendants' Financial Accounts, including the account numbers and current account balances; and
  - e. the steps taken by each Defendant, or other person served to comply with **Section I**, above.



- 2) Plaintiffs may propound interrogatories pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure and Defendants, their respective officers, employees, agents, servants and attorneys, and all persons in active concert or participation with any of them, who receive actual notice of this Order, shall provide written responses under oath to such interrogatories within fourteen (14) days of service to Plaintiffs or Plaintiffs' counsel.
- 3) Plaintiffs may serve requests for the production of documents pursuant to FRCP 26 and 34 and Defendants, their respective officers, employees, agents, servants and attorneys, and all persons in active concert or participation with any of them, who receive actual notice of this Order, shall produce all documents responsive to such requests within fourteen (14) days of service to Plaintiffs or Plaintiffs' counsel.

B. IT IS FURTHER ORDERED, as sufficient cause has been shown, that:

- 1) Within fourteen (14) days of receiving actual notice of this Order, all Financial Institutions who receive actual notice of this Order shall provide Plaintiffs or Plaintiffs' counsel ~~all~~ documents and records in their possession, custody, or control (whether located in the U.S. or abroad) relating to any and all of Defendants' Financial Accounts, *that are sufficient to show all* ~~including, but not limited to, documents and records relating to~~  

  - a. account numbers;
  - b. current account balances;
  - c. any and all identifying information for Defendants and Defendants' Storefronts, including names, addresses, and contact information;
  - d. any and all account opening documents and records, including but not limited to: account applications, signature cards, identification documents, and if a business

entity, any and all business documents provided for the opening of each and every of Defendants' Financial Accounts;

- e. any and all deposits and withdrawals during the previous year from each and every one of Defendants' Financial Accounts and any and all supporting documentation, including but not limited to: deposit slips, withdrawal slips, cancelled checks, and account statements; and
- f. any and all wire transfers into each and every one of Defendants' Financial Accounts during the previous year, including but not limited to: documents sufficient to show the identity of the destination of the transferred funds, the identity of the beneficiary's bank, and the beneficiary's account number.

C. IT IS FURTHER ORDERED, as sufficient cause has been shown, that:

- 1) Within fourteen (14) days of receiving actual notice of this Order, all Third Party Service Providers, who receive actual notice of this Order, shall provide to Plaintiffs or Plaintiffs' counsel <sup>or</sup> ~~all~~ documents and records in their possession, custody, or control (whether located in the U.S. or abroad) relating to any and all accounts held by or associated with Defendants, their respective officers, employees, agents, servants and attorneys, and all persons in active concert or participation with any of them ("User Accounts") and Defendants' Storefronts, ~~including but not limited to documents and records relating to:~~ *What are sufficient to show*

- a. ~~any and all User Accounts and Storefronts and account details, including, without limitation,~~ <sup>identifying</sup> information and account numbers for any and all User Accounts and Storefronts that Defendants have ever had and/or currently maintain with the respective Third Party Service Provider;

- b. the identities, location, and contact information, including any and all e-mail addresses, of Defendants, their respective officers, employees, agents, servants and attorneys, and all persons in active concert or participation with any of them;
- c. the ~~nature of~~ Defendants' ~~businesses and operations~~, methods of payment, methods for accepting payment, and any and all financial information, including, but not limited to, information associated with Defendants' User Accounts and Storefronts, a full accounting of Defendants' sales history and listing history under such accounts, and Defendants' Financial Accounts with any and all Financial Institutions associated with Defendants' User Accounts and Defendants' Storefronts; and
- d. Defendants' manufacturing, importing, exporting, advertising, marketing, promoting, distributing, displaying, offering for sale, and/or selling of Counterfeit Products, or any other products bearing Plaintiffs' Marks and/or marks that are confusingly similar to, identical to, and constitute a counterfeiting and/or infringement of Plaintiffs' Marks and/or incorporating the Plaintiffs' Copyright Works and/or artwork that is substantially similar to, identical to, and constitute infringement of Plaintiffs' Copyright Works.

## **VI. Security Bond**

A. IT IS FURTHER ORDERED that Plaintiffs shall deposit with the Court Five Thousand Dollars (\$5,000.00), either in cash or surety bond, as security, which amount is determined adequate for the payment of any damages any person may be entitled to recover as a result of an improper or wrongful restraint ordered hereunder.

**VII. Sealing Order**

A. IT IS FURTHER ORDERED that Plaintiffs' Complaint and exhibits attached thereto, and Plaintiffs' *ex parte* Application and the Declarations of Jessica Arnaiz, Christopher Harrs, and Mary Kate Brennan in support thereof and exhibits attached thereto and this Order shall remain sealed until further ordered by the Court. *service is made on the Defendants.*

**SO ORDERED.**

✓ SIGNED this \_\_\_\_\_ day of \_\_\_\_\_, 2017, at \_\_\_\_\_ m.

UNITED STATES DISTRICT JUDGE

*DP*

VIII. Conference.

A conference will be held on Thursday, October 12, 2017 at 3<sup>00</sup> p.m. in Courtroom 15B, 500 Pearl Street to discuss the schedule in this action and the terms of this Order.

*Memorandum*  
September 28,  
2017

Case 1:17-cv-07422-DLC Document 10-1 Filed 10/13/17 Page 21 of 27

Case 1:17-cv-07422-DLC Document 19 Filed 10/13/17 Page 22 of 27

[illegible]



[illegible]



[illegible]

[illegible]

[illegible]